

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FTCA Flint Water Cases

Civil No. 4:17-cv-11218
(Consolidated)

Linda V. Parker
United States District Judge

This Order Relates to:

ALL CASES

STIPULATED SPECIAL MASTER ORDER

Pursuant to CMO 3 [ECF No. 111, 03/02/2020], the parties met and conferred regarding who should be appointed as Special Master—and for what duties—under Rule 53. This Stipulated Special Master Order reflects the agreement to date between the parties with respect to the appointment of a Special Master for the *In re FTCA Flint Water Cases*.

A. Special Master

1. The parties agree that it would be appropriate for the Court to appoint Deborah E. Greenspan, who is currently serving as Special Master in the *In re*

Flint Water Cases pending before Judge Levy, to serve as Special Master in the *In re FTCA Flint Water Cases*. The parties also agree that the scope of the Special Master's duties for the *In re FTCA Flint Water Cases* should be limited to the duties specified in this Court's CMO 3, Section III, "Bellwether Proceedings." If the parties or the Court become interested in appointing the Special Master to perform duties beyond those specified and contemplated by CMO 3 in the future, then a separate or supplemental order will be issued to address any additional or supplemental duties to be performed by the Special Master.

B. Scope

2. This order applies to all *In re FTCA Flint Water Cases* currently pending before this Court, pursuant to CMO 2 [ECF No. 91, 12/18/2019], and to all related FTCA actions that have been or will be originally filed in, transferred to, or removed and assigned to this Court. This order is binding on all parties and their counsel in all cases currently pending or subsequently made part of these proceedings and will govern each case in the proceedings.

3. The Court intends to appoint a Special Master to perform the duties specified in several provisions in CMO 3 to facilitate bellwether proceedings with FTCA plaintiffs. Specifically, as specified in CMO 3, the Special Master will assist with the creation of:

- a. 7 claim categories [CMO 3, ¶III(A)],
- b. Census for the FTCA plaintiffs [CMO 3, ¶III(B)],
- c. Categorizing Claims [CMO 3, ¶III(C)],
- d. FTCA Disclosure Group [CMO 3, ¶III(D)], and
- e. FTCA Discovery Group [CMO 3, ¶III(E)].

C. Basis for Appointment

4. Rule 53(a)(1)(C) addresses pretrial matters that cannot be addressed effectively and timely by an available district judge or magistrate judge of the district. The bellwether structuring and data management duties, specified above in Paragraphs (B)(3)(a)-(c), are particularly time consuming and the proposed Special Master Deborah Greenspan previously obtained significant experience in managing a related data set for the *Flint Water Cases* pending before Judge Judith Levy. Special Master Greenspan is positioned to efficiently assist this Court with implementing the bellwether disclosure and discovery process specified in CMO 3.

D. Potential Disqualification

5. Upon appointment, the Court will request that Special Master Greenspan, Pursuant to Rule 53(a)(2) and 53(b)(3), submit a declaration to the Court to confirm that she has no relationship to the parties, counsel in this *In re*

FTCA Flint Water Cases litigation, or Court that would require disqualification of a judge under 28 U.S.C. § 455. During the course of these proceedings, the Special Master and the parties will notify the Court immediately if they become aware of any potential grounds that would require disqualification.

E. Fairness Considerations

6. Pursuant to Rule 53(a)(3), the Court has considered the fairness of imposing the likely expenses of the Special Master on the parties. The Court believes that the appointment and use of the Special Master will materially advance the litigation, thereby achieving considerable cost-saving to all parties. The Court will protect against unreasonable expenses and delay through regular communication with the Special Master and counsel.

F. Confidentiality

7. The Special Master is authorized to receive and consider information that may be designated as confidential pursuant to any protective order entered in this matter. The Special Master will be bound by any protective orders entered in this case.

G. Proper Notice Given to All Parties

8. Pursuant to Rule 53(b)(1) and the Court's March 2, 2020 order, the Court gave all parties to these proceedings notice of its intent to appoint the Special Master and an opportunity to be heard with respect to such an

appointment before issuing this order. The Court has reviewed the filing and determined that no objection has been presented that would prevent the appointment of a Special Master in this case.

H. Special Master's Compensation

9. Pursuant to Rule 53(g), the Special Master will be compensated at the hourly rate of \$600 for her services as Special Master in these cases, which is the same hourly rate approved for her work before Judge Levy in the *In re Flint Water Cases* in ECF No. 524 (07/05/2018), or a different hourly rate if her rate is adjusted in subsequent orders, and will be reimbursed for any out-of-pocket expenses (e.g., costs of clerical or other necessary personnel). The Special Master may be reimbursed for travel expenses, but will not charge for travel time. The Special Master will prepare a monthly invoice for her services, which she will provide to FTCA Plaintiffs' Liaison Counsel, once appointed, and counsel for the United States.

10. The Special Master is authorized to retain clerical assistants or other necessary personnel within her firm, used at an appropriate hourly rate, to assist her with the preparation of any report concerning the bellwether process specified in CMO 3 for the *FTCA Flint Water Cases*.

11. Counsel for the FTCA Plaintiffs and the United States each will pay one-half of all hourly rates, expenses, and costs, that are attributable solely to work

by the Special Master performed for the *In re FTCA Flint Water Cases* as specified in this Special Master Order.

I. *Ex Parte Communications*

12. Pursuant to Rule 53(b)(2)(B), the Special Master may communicate *ex parte* with the Court at any time. Generally, in order to facilitate the fair and effective performance of her duties for the bellwether items specified above and in CMO 3, the Special Master may communicate *ex parte* with counsel.

J. Preservation of Materials and Preparation of Record.

13. Pursuant to Rule 53(b)(2)(C), the Special Master will maintain files consisting of all documents submitted to her by the parties and of any of her compilations and work-products, as specified, above, in CMO 3.

K. Contact Information

14. The Special Master's contact information is:

Deborah E. Greenspan, Blank Rome LLP
1825 Eye Street NW, Washington, D.C. 20006
Phone: (202) 420-3100

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: March 25, 2020

Dated: March 12, 2020

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Respectfully,

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